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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/890,035	07/26/2001	Giovanni Bocola	1011-326	5919

7590

08/16/2002

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EXAMINER

HYLTON, ROBIN ANNETTE

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 08/16/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

09/890,035

Applicant(s)

BOCOLA, GIOVANNI

Examiner

Robin A. Hylton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) ____ is/are rejected.
- 7) ☒ Claim(s) 6 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 July 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____. | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the open structure of the bottom end allowing the container body to be coupled to a vial or tube or which can be blow molded into a vial or tube must be shown or the features canceled from the claims. No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

2. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

3. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. The title should include at least one technical, or inventive, feature of the claimed instant invention.

Claim Objections

4. Claims 3 and 4 are objected to because of the following informalities: in claim 3, line 3, the term --a -- should be inserted after "open at" and in claim 4, line 3, "are" should be -- is --. Appropriate correction is required.

5. Claim 6 is objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim must refer back to preceding claims in the alternative only. See MPEP § 608.01(n). Accordingly, the claim has not been further treated on the merits.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

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The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. Claims 3 and 4 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no disclosure as to how the container body is coupled to a vial or tube via an open end of the container body (claim 3) and how the container body is blow molded to form the vial or tube (claim 4).

8. Claims 3 and 4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear how the container body of claim 3 is coupled to a vial or tube via an open end of the container body and the vial or tube is blow molded through the open end of the container body as set forth in claim 4.

What structure allows the container body of claim 3 to be coupled to a vial or tube?

In claim 4, line 2, "said vial or tube" implies the vial or tube is part of the claimed invention. However, in claim 3, the vial and tube are not part of the claimed container body. It is unclear if applicant intends to claim the tube or vial as part of the claimed invention.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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10. Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rapchak et al. (US 5,667,094) in view of Weiler et al. (US 4,157,144).

Rapchak teaches a container body **10** and a covering element **11** attached by a hinge **20**, the covering element having an annular sealing member **29** for sealing the open mouth of the container body.

Weiler teaches it is known to provide either an annular sealing member or a gasket on a covering member.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute a gasket for the annular sealing member of Rapchak. Doing so is an obvious substitution of equivalent structure known in the closure art for sealing a container mouth.

It is noted that the process used to make the claimed container of claim 1 does not structurally limit the claimed invention.

11. Claims 1,2 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mueller (US 5,008,066) in view of Weiler.

Mueller teaches a container body **12'** and a covering element **20** attached by a hinge **24**, the covering element having an annular sealing member **52** for sealing the open mouth of the container body.

Weiler teaches it is known to provide either an annular sealing member or a gasket on a covering member.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute a gasket for the annular sealing member of Mueller. Doing so is an obvious substitution of equivalent structure known in the closure art for sealing a container mouth.

It is noted that the process used to make the claimed container of claim 1 does not structurally limit the claimed invention.

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12. Claims 1,2, and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pehr.

Pehr discloses in the embodiment depicted in figures 1-5, the claimed invention except for a gasket of different material formed on the covering element. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the sealing member of Pehr of a separate and different material from the covering element, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179. Doing so would allow for applying a softer, more resilient material to be used for sealing the container body opening.

It is noted that the process used to make the claimed container of claim 1 does not structurally limit the claimed invention.

13. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pehr (US 3,587,944) in view of Weiler.

In the embodiment depicted in figures 6-8, Pehr teaches a container body **30** and a covering element **35** attached by a hinge **36**, the covering element having an annular sealing member **38** for sealing the open mouth of the container body.

Weiler teaches it is known to provide either an annular sealing member or a gasket on a covering member.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute a gasket for the annular sealing member of Pehr. Doing so is an obvious substitution of equivalent structure known in the closure art for sealing a container mouth.

Regarding claim 3, the container body **30** is coupled to a vial **29**.

To the degree claim 4 is understood, the container body **30** can be blow molded into a vial or tube.

It is noted that the process used to make the claimed container of claim 1 does not structurally limit the claimed invention.

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Claim 4 is a product-by-process claim which does not further structurally limit the claimed invention.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various prior art containers and closures having integrally formed hinged covering elements are cited for their disclosures.

15. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 305-3579. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

16. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. _____ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 305-3579 on the date shown below:

Typed or printed name of person signing this certificate

Signature_____

Date_____

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (703) 308-1208. The examiner works a flexible schedule, but can normally be reached on Monday - Friday from 10:00 a.m. to 5:30 p.m. (Eastern time).

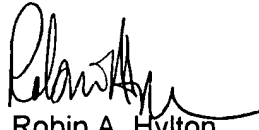
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on (703) 308-2572.

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If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Bembry at (703) 306-4005.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.

RAH
August 12, 2002



Robin A. Hylton
Patent Examiner
GAU 3727